

DEC 31 1979

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1902

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
AFL-CIO,

v.

Petitioner,

CONSOLIDATED EXPRESS, INC., and TWIN EXPRESS, INC.,

Respondents.

No. 78-1905

NEW YORK SHIPPING ASSOCIATION, INC., *et al.*,

v.

Petitioners,

CONSOLIDATED EXPRESS, INC., and TWIN EXPRESS, INC.,

*Respondents.*ON PETITIONS FOR WRITS OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**SUPPLEMENTAL REPLY MEMORANDUM
FOR PETITIONERS**ALFRED A. GIARDINO
CONSTANTINE P. LAMBOS
DONATO CARUSO*Counsel for Petitioners, New York
Shipping Association, Inc.; Interna-
tional Terminal Operating Co., Inc.;
John W. McGrath Corp; Pittston
Stevedoring Corp; and, Universal
Maritime Service Corp.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1979

No. 78-1902

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Petitioner,
v.

CONSOLIDATED EXPRESS, INC., and TWIN EXPRESS, INC.,
Respondents.

No. 78-1905

NEW YORK SHIPPING ASSOCIATION, INC., ET AL.,
Petitioners,
v.

CONSOLIDATED EXPRESS, INC., and TWIN EXPRESS, INC.,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

**SUPPLEMENTAL REPLY MEMORANDUM
FOR PETITIONERS**

This supplemental reply is filed, pursuant to Rule 24(5)
of the Rules of this Court, to bring to the Court's atten-

tion the recent orders, dated December 13, 1979, of the United States Court of Appeals for the District of Columbia Circuit denying the petitions for rehearing *en banc* in *International Longshoremen's Ass'n v. NLRB*, — F.2d —, 102 L.R.R.M. 2361 (D.C. Cir. Sept. 25, 1979) (Nos. 77-1735, 77-1758 & 78-1510) (hereinafter "*ILA*"). Copies of these orders are reproduced as an addendum hereto.

The District of Columbia Circuit has now finally determined, contrary to the earlier decision of the Second Circuit in *International Longshoremen's Ass'n v. NLRB*, 537 F.2d 706 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977), that the identical collectively bargained Rules on Containers challenged in this case under the antitrust laws are lawful work preservation provisions under federal labor law. In view of this intercircuit conflict, petitioners, New York Shipping Association, Inc. and International Longshoremen's Association, AFL-CIO, are filing simultaneously herewith petitions for certiorari in *ILA*.

As petitioners advocated in their Supplemental Brief, filed in this case on October 2, 1979, the District of Columbia Circuit's decision in *ILA* underscores the importance of the interrelated labor/antitrust issues presented in this case. In view of the denial of rehearing *en banc* in *ILA*, the suggestion raised by the United States that review of this case would be premature until the labor law issues have been settled is no longer warranted. These labor law questions are now before this Court. No sound reason exists to refuse to entertain simultaneously the related and exceptionally important issues in this case, which merit review in their own right.

CONCLUSION

For the foregoing reasons, the petitions for writs of certiorari should be granted.

Dated: New York, New York
December 31, 1979

Respectfully submitted,

ALFRED A. GIARDINO
CONSTANTINE P. LAMBOS
DONATO CARUSO

*Counsel for Petitioners, New York
Shipping Association, Inc.; International
Terminal Operating Co., Inc.;
John W. McGrath Corp.; Pittston
Stevedoring Corp.; and, Universal
Maritime Service Corp.
(In No. 78-1905)*

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Of Counsel,

ERNEST L. MATHEWS, JR.

ADDENDUM

1A

**Orders of Court of Appeals Denying Rehearing and
Suggestion For Rehearing *En Banc***

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1735

September Term, 1979

FILED DEC 13 1979

GEORGE A. FISHER

Clerk

International Longshoremen's Association, AFL-CIO and
Council of North Atlantic Shipping Association,

Petitioner

v.

National Labor Relations Board,

Respondent

And Consolidated Case No. 77-1758

BEFORE: Wright, Chief Judge; McGowan, Tamm, Leven-
thal,* Robinson, MacKinnon, Robb, Wilkey,
Wald, and Mikva, Circuit Judges

ORDER

The suggestion for rehearing *en banc* filed by respondent Board having been transmitted to the full Court and a majority of the judges in regular active service not having voted in favor thereof, it is

* Circuit Judge Leventhal considered this matter but died before the order issued.

Orders of Court of Appeals Denying Rehearing and
Suggestion For Rehearing *En Banc*

ORDERED, by the Court, *en banc*, that respondent's afore-
said suggestion for rehearing *en banc* is denied.

Per Curiam
FOR THE COURT:
/s/ GEORGE A. FISHER
George A. Fisher
Clerk

Circuit Judges Tamm, MacKinnon, Robb, and Wilkey
would grant respondent's suggestion for rehearing *en banc*.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1735

September Term, 1979

FILED DEC 13 1979
GEORGE A. FISHER
Clerk

International Longshoremen's Association, AFL-CIO and
Council of North Atlantic Shipping Association,

Petitioner

v.

National Labor Relations Board,
Respondent

Orders of Court of Appeals Denying Rehearing and
Suggestion For Rehearing *En Banc*

And Consolidated Case No. 77-1758

BEFORE: Wright, Chief Judge; McGowan, Tamm, Leven-
thal,* Robinson, MacKinnon, Robb, Wilkey,
Wald, and Mikva, Circuit Judges

ORDER

The suggestion for rehearing *en banc* filed by intervenor
Houff Transfer, Inc., having been transmitted to the full
Court and a majority of the judges in regular active service
not having voted in favor thereof, it is

ORDERED, by the Court, *en banc*, that intervenor's afore-
said suggestion for rehearing *en banc* is denied.

Per Curiam
FOR THE COURT:
/s/ GEORGE A. FISHER
George A. Fisher
Clerk

Circuit Judges Tamm, MacKinnon, Robb, and Wilkey
would grant intervenor's suggestion for rehearing *en banc*.

* Circuit Judge Leventhal considered this matter but died
before the order issued.

4A

Orders of Court of Appeals Denying Rehearing and
Suggestion For Rehearing *En Banc*

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1735

September Term, 1979

FILED DEC 13 1979

GEORGE A. FISHER

Clerk

International Longshoremen's Association, AFL-CIO and
Council of North Atlantic Shipping Association,

Petitioner

v.

National Labor Relations Board,

Respondent

And Consolidated Case No. 77-1758

BEFORE: Wright, Chief Judge; McGowan, Tamm, Robinson,
MacKinnon, Robb, Wilkey, Wald, and
Mikva, Circuit Judges

ORDER

The suggestion for rehearing *en banc* filed by intervenor
Tidewater Motor Truck Association having been trans-
mitted to the full Court and a majority of the judges in
regular active service not having voted in favor thereof,
it is

5A

Orders of Court of Appeals Denying Rehearing and
Suggestion For Rehearing *En Banc*

ORDERED, by the Court, *en banc*, that intervenor's afore-
said suggestion for rehearing *en banc* is denied.

Per Curiam

FOR THE COURT:

/s/ GEORGE A. FISHER

George A. Fisher

Clerk

Circuit Judges Tamm, MacKinnon, and Robb would grant
intervenor's suggestion for rehearing *en banc*.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 78-1510

September Term, 1979

FILED DEC 13 1979

GEORGE A. FISHER

Clerk

International Longshoremen's Association, AFL-CIO and
New York Shipping Association, Inc.,

Petitioners

v.

National Labor Relations Board,

Respondent

Dolphin Forwarding, Inc.,
Tidewater Motor Truck Association,

Intervenors

6A

Orders of Court of Appeals Denying Rehearing and
Suggestion For Rehearing *En Banc*

BEFORE: Wright, Chief Judge; McGowan, Tamm, Robinson,
MacKinnon, Robb, Wilkey, Wald, and
Mikva, Circuit Judges

ORDER

The suggestion for rehearing *en banc* filed by intervenor
Dolphin Forwarding, Inc., having been transmitted to the
full Court and a majority of the judges in regular active
service not having voted in favor thereof, it is

ORDERED, by the Court, *en banc*, that intervenor's afore-
said suggestion for rehearing *en banc* is denied.

Per Curiam
FOR THE COURT:
/s/ GEORGE A. FISHER
George A. Fisher
Clerk

Circuit Judges Tamm, MacKinnon, and Robb would grant
intervenor's suggestion for rehearing *en banc*.

7A

Orders of Court of Appeals Denying Rehearing and
Suggestion For Rehearing *En Banc*

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1735

September Term, 1979

FILED DEC 13 1979
GEORGE A. FISHER
Clerk

International Longshoremen's Association, AFL-CIO and
Council of North Atlantic Shipping Association,
Petitioner

v.

National Labor Relations Board,
Respondent

And Consolidated Case No. 77-1758

BEFORE: Wright, Chief Judge; Robinson and Robb,
Circuit Judges

ORDER

Upon consideration of respondent's (Board) petition for
rehearing, it is

ORDERED, by the Court, that respondent's aforesaid peti-
tion for rehearing is denied.

Per Curiam
FOR THE COURT:
/s/ GEORGE A. FISHER
George A. Fisher
Clerk

8A

Orders of Court of Appeals Denying Rehearing and
Suggestion For Rehearing *En Banc*

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1735

September Term, 1979

FILED DEC 13 1979
GEORGE A. FISHER
Clerk

International Longshoremen's Association, AFL-CIO and
Council of North Atlantic Shipping Association,
Petitioner

v.

National Labor Relations Board,
Respondent

And Consolidated Case No. 77-1758

BEFORE: Wright, Chief Judge; Robinson and Robb,
Circuit Judges

ORDER

Upon consideration of intervenor's (Houff Transfer,
Inc.) petition for rehearing, it is

ORDERED, by the Court, that intervenor's aforesaid peti-
tion for rehearing is denied.

Per Curiam
FOR THE COURT:
/s/ GEORGE A. FISHER
George A. Fisher
Clerk

9A

Orders of Court of Appeals Denying Rehearing and
Suggestion For Rehearing *En Banc*

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1735

September Term, 1979

FILED DEC 13 1979
GEORGE A. FISHER
Clerk

International Longshoremen's Association, AFL-CIO and
Council of North Atlantic Shipping Association,
Petitioner

v.

National Labor Relations Board,
Respondent

And Consolidated Case No. 77-1758

BEFORE: Wright, Chief Judge; Robinson and Robb,
Circuit Judges

ORDER

Upon consideration of intervenor's (Tidewater Motor
Truck Assoc.) petition for rehearing, it is

ORDERED, by the Court, that intervenor's aforesaid peti-
tion for rehearing is denied.

Per Curiam
FOR THE COURT:
/s/ GEORGE A. FISHER
George A. Fisher
Clerk

Orders of Court of Appeals Denying Rehearing and
Suggestion For Rehearing *En Banc*

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 78-1510

September Term, 1979

FILED DEC 13 1979

GEORGE A. FISHER

Clerk

International Longshoremen's Association, AFL-CIO and
New York Shipping Association, Inc.,
Petitioners

v.

National Labor Relations Board,
Respondent

Dolphin Forwarding, Inc.,
Tidewater Motor Truck Association,
Intervenors

BEFORE: Wright, Chief Judge; Robinson and Robb,
Circuit Judges

ORDER

Upon consideration of intervenor's (Dolphin Forwarding, Inc.) petition for rehearing, it is

ORDERED, by the Court, that intervenor's aforesaid petition for rehearing is denied.

Per Curiam

FOR THE COURT:

/s/ GEORGE A. FISHER

George A. Fisher

Clerk